SUPREME COURT OF THE UNITED STATES

No. 16–111

MASTERPIECE CAKESHOP, LTD., ET AL., PETITIONERS *v.* COLORADO CIVIL RIGHTS COMMISSION, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF COLORADO

[June 4, 2018]

JUSTICE THOMAS, with whom JUSTICE GORSUCH joins, concurring in part and concurring in the judgment.

I agree that the Colorado Civil Rights Commission (Commission) violated Jack Phillips' right to freely exercise his religion. As JUSTICE GORSUCH explains, the Commission treated Phillips' case differently from a similar case involving three other bakers, for reasons that can only be explained by hostility toward Phillips' religion. See *ante,* at 2–7 (concurring opinion). The Court agrees that the Commission treated Phillips differently, and it points out that some of the Commissioners made comments disparaging Phillips' religion. See *ante,* at 12–16. Although the Commissioners' comments are certainly disturbing, the discriminatory application of Colorado's public-accommodations law is enough on its own to violate Phillips' rights. To the extent the Court agrees, I join its opinion.

While Phillips rightly prevails on his free-exercise claim, I write separately to address his free-speech claim. The Court does not address this claim because it has some uncertainties about the record. See *ante,* at 2. Specifically, the parties dispute whether Phillips refused to create a *custom* wedding cake for the individual respondents, or whether he refused to sell them *any* wedding cake (including a premade one). But the Colorado Court of Appeals

resolved this factual dispute in Phillips' favor. The court described his conduct as a refusal to "design and create a cake to celebrate [a] same-sex wedding." *Craig* v. *Masterpiece Cakeshop, Inc.*, 370 P. 3d 272, 276 (2015); see also *id.,* at 286 ("designing and selling a wedding cake"); *id.,* at 283 ("refusing to create a wedding cake"). And it noted that the Commission's order required Phillips to sell "'*any* product [he] would sell to heterosexual couples,'" including custom wedding cakes. *Id.,* at 286 (emphasis added).

Even after describing his conduct this way, the Court of Appeals concluded that Phillips' conduct was not expressive and was not protected speech. It reasoned that an outside observer would think that Phillips was merely complying with Colorado's public-accommodations law, not expressing a message, and that Phillips could post a disclaimer to that effect. This reasoning flouts bedrock principles of our free-speech jurisprudence and would justify virtually any law that compels individuals to speak. It should not pass without comment.

I

The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits state laws that abridge the "freedom of speech." When interpreting this command, this Court has distinguished between regulations of speech and regulations of conduct. The latter generally do not abridge the freedom of speech, even if they impose "incidental burdens" on expression. *Sorrell* v. *IMS Health Inc.*, 564 U. S. 552, 567 (2011). As the Court explains today, public-accommodations laws usually regulate conduct. *Ante,* at 9–10 (citing *Hurley* v. *Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U. S. 557, 572 (1995)). "[A]s a general matter," public-accommodations laws do not "target speech" but instead prohibit "the *act* of discriminating against individuals in the provision of publicly available goods, privileges,

and services." *Id.,* at 572 (emphasis added).

Although public-accommodations laws generally regulate conduct, particular applications of them can burden protected speech. When a public-accommodations law "ha[s] the effect of declaring . . . speech itself to be the public accommodation," the First Amendment applies with full force. *Id.*, at 573; accord, *Boy Scouts of America* v. *Dale*, 530 U. S. 640, 657–659 (2000). In *Hurley*, for example, a Massachusetts public-accommodations law prohibited "'any distinction, discrimination or restriction on account of . . . sexual orientation . . . relative to the admission of any person to, or treatment in any place of public accommodation.'" 515 U. S., at 561 (quoting Mass. Gen. Laws §272:98 (1992); ellipsis in original). When this law required the sponsor of a St. Patrick's Day parade to include a parade unit of gay, lesbian, and bisexual Irish-Americans, the Court unanimously held that the law violated the sponsor's right to free speech. Parades are "a form of expression," this Court explained, and the application of the public-accommodations law "alter[ed] the expressive content" of the parade by forcing the sponsor to add a new unit. 515 U. S., at 568, 572–573. The addition of that unit compelled the organizer to "bear witness to the fact that some Irish are gay, lesbian, or bisexual"; "suggest . . . that people of their sexual orientation have as much claim to unqualified social acceptance as heterosexuals"; and imply that their participation "merits celebration." *Id.,* at 574. While this Court acknowledged that the unit's exclusion might have been "misguided, or even hurtful," *ibid.*, it rejected the notion that governments can mandate "thoughts and statements acceptable to some groups or, indeed, all people" as the "antithesis" of free speech, *id.,* at 579; accord, *Dale*, *supra,* at 660–661.

The parade in *Hurley* was an example of what this Court has termed "expressive conduct." See 515 U. S., at 568–569. This Court has long held that "the Constitution

looks beyond written or spoken words as mediums of expression," *id.*, at 569, and that "[s]ymbolism is a primitive but effective way of communicating ideas," *West Virginia Bd. of Ed.* v. *Barnette*, 319 U. S. 624, 632 (1943). Thus, a person's "conduct may be 'sufficiently imbued with elements of communication to fall within the scope of the First and Fourteenth Amendments.'" *Texas* v. *Johnson*, 491 U. S. 397, 404 (1989). Applying this principle, the Court has recognized a wide array of conduct that can qualify as expressive, including nude dancing, burning the American flag, flying an upside-down American flag with a taped-on peace sign, wearing a military uniform, wearing a black armband, conducting a silent sit-in, refusing to salute the American flag, and flying a plain red flag.[1]

Of course, conduct does not qualify as protected speech simply because "the person engaging in [it] intends thereby to express an idea." *United States* v. *O'Brien*, 391 U. S. 367, 376 (1968). To determine whether conduct is sufficiently expressive, the Court asks whether it was "intended to be communicative" and, "in context, would reasonably be understood by the viewer to be communicative." *Clark* v. *Community for Creative Non-Violence*, 468 U. S. 288, 294 (1984). But a "'particularized message'" is not required, or else the freedom of speech "would never reach the unquestionably shielded painting of Jackson Pollock, music of Arnold Schöenberg, or Jabberwocky verse of Lewis Carroll." *Hurley*, 515 U. S., at 569.

Once a court concludes that conduct is expressive, the

---

[1] *Barnes* v. *Glen Theatre, Inc.*, 501 U. S. 560, 565–566 (1991); *Texas* v. *Johnson*, 491 U. S. 397, 405–406 (1989); *Spence* v. *Washington*, 418 U. S. 405, 406, 409–411 (1974) (*per curiam*); *Schacht* v. *United States*, 398 U. S. 58, 62–63 (1970); *Tinker* v. *Des Moines Independent Community School Dist.*, 393 U. S. 503, 505–506 (1969); *Brown* v. *Louisiana*, 383 U. S. 131, 141–142 (1966) (opinion of Fortas, J.); *West Virginia Bd. of Ed.* v. *Barnette*, 319 U. S. 624, 633–634 (1943); *Stromberg* v. *California*, 283 U. S. 359, 361, 369 (1931).

Constitution limits the government's authority to restrict or compel it. "[O]ne important manifestation of the principle of free speech is that one who chooses to speak may also decide 'what not to say'" and "tailor" the content of his message as he sees fit. *Id.,* at 573 (quoting *Pacific Gas & Elec. Co.* v. *Public Util. Comm'n of Cal.*, 475 U. S. 1, 16 (1986) (plurality opinion)). This rule "applies not only to expressions of value, opinion, or endorsement, but equally to statements of fact the speaker would rather avoid." *Hurley*, *supra*, at 573. And it "makes no difference" whether the government is regulating the "creati[on], distributi[on], or consum[ption]" of the speech. *Brown* v. *Entertainment Merchants Assn.*, 564 U. S. 786, 792, n. 1 (2011).

II

A

The conduct that the Colorado Court of Appeals ascribed to Phillips—creating and designing custom wedding cakes—is expressive. Phillips considers himself an artist. The logo for Masterpiece Cakeshop is an artist's paint palate with a paintbrush and baker's whisk. Behind the counter Phillips has a picture that depicts him as an artist painting on a canvas. Phillips takes exceptional care with each cake that he creates—sketching the design out on paper, choosing the color scheme, creating the frosting and decorations, baking and sculpting the cake, decorating it, and delivering it to the wedding. Examples of his creations can be seen on Masterpiece's website. See http://masterpiececakes.com/wedding-cakes (as last visited June 1, 2018).

Phillips is an active participant in the wedding celebration. He sits down with each couple for a consultation before he creates their custom wedding cake. He discusses their preferences, their personalities, and the details of their wedding to ensure that each cake reflects the couple

who ordered it. In addition to creating and delivering the cake—a focal point of the wedding celebration—Phillips sometimes stays and interacts with the guests at the wedding. And the guests often recognize his creations and seek his bakery out afterward. Phillips also sees the inherent symbolism in wedding cakes. To him, a wedding cake inherently communicates that "a wedding has occurred, a marriage has begun, and the couple should be celebrated." App. 162.

Wedding cakes do, in fact, communicate this message. A tradition from Victorian England that made its way to America after the Civil War, "[w]edding cakes are so packed with symbolism that it is hard to know where to begin." M. Krondl, Sweet Invention: A History of Dessert 321 (2011) (Krondl); see also *ibid.* (explaining the symbolism behind the color, texture, flavor, and cutting of the cake). If an average person walked into a room and saw a white, multi-tiered cake, he would immediately know that he had stumbled upon a wedding. The cake is "so standardised and inevitable a part of getting married that few ever think to question it." Charsley, Interpretation and Custom: The Case of the Wedding Cake, 22 Man 93, 95 (1987). Almost no wedding, no matter how spartan, is missing the cake. See *id.,* at 98. "A whole series of events expected in the context of a wedding would be impossible without it: an essential photograph, the cutting, the toast, and the distribution of both cake and favours at the wedding and afterwards." *Ibid.* Although the cake is eventually eaten, that is not its primary purpose. See *id.,* at 95 ("It is not unusual to hear people declaring that they do not like wedding cake, meaning that they do not like to eat it. This includes people who are, without question, having such cakes for their weddings"); *id.,* at 97 ("Nothing is made of the eating itself"); Krondl 320–321 (explaining that wedding cakes have long been described as "inedible"). The cake's purpose is to mark the beginning of a

new marriage and to celebrate the couple.[2]

Accordingly, Phillips' creation of custom wedding cakes is expressive. The use of his artistic talents to create a well-recognized symbol that celebrates the beginning of a marriage clearly communicates a message—certainly more so than nude dancing, *Barnes* v. *Glen Theatre, Inc.*, 501 U. S. 560, 565–566 (1991), or flying a plain red flag, *Stromberg* v. *California*, 283 U. S. 359, 369 (1931).[3] By forcing Phillips to create custom wedding cakes for same-

---

[2]The Colorado Court of Appeals acknowledged that "a wedding cake, in some circumstances, may convey a particularized message celebrating same-sex marriage," depending on its "design" and whether it has "written inscriptions." *Craig* v. *Masterpiece Cakeshop, Inc.*, 370 P. 3d 272, 288 (2015). But a wedding cake needs no particular design or written words to communicate the basic message that a wedding is occurring, a marriage has begun, and the couple should be celebrated. Wedding cakes have long varied in color, decorations, and style, but those differences do not prevent people from recognizing wedding cakes as wedding cakes. See Charsley, Interpretation and Custom: The Case of the Wedding Cake, 22 Man 93, 96 (1987). And regardless, the Commission's order does not distinguish between plain wedding cakes and wedding cakes with particular designs or inscriptions; it requires Phillips to make any wedding cake for a same-sex wedding that he would make for an opposite-sex wedding.

[3]The dissent faults Phillips for not "submitting . . . evidence" that wedding cakes communicate a message. *Post,* at 2, n. 1 (opinion of GINSBURG, J.). But this requirement finds no support in our precedents. This Court did not insist that the parties submit evidence detailing the expressive nature of parades, flags, or nude dancing. See *Hurley* v. *Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U. S. 557, 568–570 (1995); *Spence*, 418 U. S., at 410–411; *Barnes*, 501 U. S., at 565–566. And we do not need extensive evidence here to conclude that Phillips' artistry is expressive, see *Hurley*, 515 U. S., at 569, or that wedding cakes at least communicate the basic fact that "this is a wedding," see *id.,* at 573–575. Nor does it matter that the couple also communicates a message through the cake. More than one person can be engaged in protected speech at the same time. See *id.*, at 569–570. And by forcing him to provide the cake, Colorado is requiring Phillips to be "intimately connected" with the couple's speech, which is enough to implicate his First Amendment rights. See *id.,* at 576.

sex weddings, Colorado's public-accommodations law "alter[s] the expressive content" of his message. *Hurley*, 515 U. S., at 572. The meaning of expressive conduct, this Court has explained, depends on "the context in which it occur[s]." *Johnson*, 491 U. S., at 405. Forcing Phillips to make custom wedding cakes for same-sex marriages requires him to, at the very least, acknowledge that same-sex weddings are "weddings" and suggest that they should be celebrated—the precise message he believes his faith forbids. The First Amendment prohibits Colorado from requiring Phillips to "bear witness to [these] fact[s]," *Hurley*, 515 U. S., at 574, or to "affir[m] . . . a belief with which [he] disagrees," *id.,* at 573.

B

The Colorado Court of Appeals nevertheless concluded that Phillips' conduct was "not sufficiently expressive" to be protected from state compulsion. 370 P. 3d, at 283. It noted that a reasonable observer would not view Phillips' conduct as "an endorsement of same-sex marriage," but rather as mere "compliance" with Colorado's public-accommodations law. *Id.,* at 286–287 (citing *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.*, 547 U. S. 47, 64–65 (2006) (*FAIR*); *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 841–842 (1995); *PruneYard Shopping Center* v. *Robins*, 447 U. S. 74, 76–78 (1980)). It also emphasized that Masterpiece could "disassociat[e]" itself from same-sex marriage by posting a "disclaimer" stating that Colorado law "requires it not to discriminate" or that "the provision of its services does not constitute an endorsement." 370 P. 3d, at 288. This reasoning is badly misguided.

1

The Colorado Court of Appeals was wrong to conclude that Phillips' conduct was not expressive because a rea-

sonable observer would think he is merely complying with Colorado's public-accommodations law. This argument would justify any law that compelled protected speech. And, this Court has never accepted it. From the beginning, this Court's compelled-speech precedents have rejected arguments that "would resolve every issue of power in favor of those in authority." *Barnette*, 319 U. S., at 636. *Hurley*, for example, held that the application of Massachusetts' public-accommodations law "requir[ed] [the organizers] to alter the expressive content of their parade." 515 U. S., at 572–573. It did not hold that reasonable observers would view the organizers as merely complying with Massachusetts' public-accommodations law.

The decisions that the Colorado Court of Appeals cited for this proposition are far afield. It cited three decisions where groups objected to being forced to provide a forum for a third party's speech. See *FAIR*, *supra*, at 51 (law school refused to allow military recruiters on campus); *Rosenberger*, *supra*, at 822–823 (public university refused to provide funds to a religious student paper); *PruneYard*, *supra*, at 77 (shopping center refused to allow individuals to collect signatures on its property). In those decisions, this Court rejected the argument that requiring the groups to provide a forum for third-party speech also required them to endorse that speech. See *FAIR*, *supra*, at 63–65; *Rosenberger*, *supra*, at 841–842; *PruneYard*, *supra*, at 85–88. But these decisions do not suggest that the government can force speakers to alter their *own* message. See *Pacific Gas & Elec.*, 475 U. S., at 12 ("Notably absent from *PruneYard* was any concern that access . . . might affect the shopping center owner's exercise of his own right to speak"); *Hurley*, *supra*, at 580 (similar).

The Colorado Court of Appeals also noted that Masterpiece is a "for-profit bakery" that "charges its customers." 370 P. 3d, at 287. But this Court has repeatedly rejected the notion that a speaker's profit motive gives the gov-

ernment a freer hand in compelling speech. See *Pacific Gas & Elec.*, *supra*, at 8, 16 (collecting cases); *Virginia Bd. of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*, 425 U. S. 748, 761 (1976) (deeming it "beyond serious dispute" that "[s]peech . . . is protected even though it is carried in a form that is 'sold' for profit"). Further, even assuming that most for-profit companies prioritize maximizing profits over communicating a message, that is not true for Masterpiece Cakeshop. Phillips routinely sacrifices profits to ensure that Masterpiece operates in a way that represents his Christian faith. He is not open on Sundays, he pays his employees a higher-than-average wage, and he loans them money in times of need. Phillips also refuses to bake cakes containing alcohol, cakes with racist or homophobic messages, cakes criticizing God, and cakes celebrating Halloween—even though Halloween is one of the most lucrative seasons for bakeries. These efforts to exercise control over the messages that Masterpiece sends are still more evidence that Phillips' conduct is expressive. See *Miami Herald Publishing Co.* v. *Tornillo*, 418 U. S. 241, 256–258 (1974); *Walker* v. *Texas Div., Sons of Confederate Veterans, Inc.*, 576 U. S. ___, ___ (2015) (slip op., at 15).

2

The Colorado Court of Appeals also erred by suggesting that Phillips could simply post a disclaimer, disassociating Masterpiece from any support for same-sex marriage. Again, this argument would justify any law compelling speech. And again, this Court has rejected it. We have described similar arguments as "beg[ging] the core question." *Tornillo*, *supra*, at 256. Because the government cannot compel speech, it also cannot "require speakers to affirm in one breath that which they deny in the next." *Pacific Gas & Elec.*, 475 U. S., at 16; see also *id.,* at 15, n. 11 (citing *PruneYard*, 447 U. S., at 99 (Powell, J., con-

curring in part and concurring in judgment)). States cannot put individuals to the choice of "be[ing] compelled to affirm someone else's belief" or "be[ing] forced to speak when [they] would prefer to remain silent." *Id.,* at 99.

III

Because Phillips' conduct (as described by the Colorado Court of Appeals) was expressive, Colorado's public-accommodations law cannot penalize it unless the law withstands strict scrutiny. Although this Court sometimes reviews regulations of expressive conduct under the more lenient test articulated in *O'Brien*,[4] that test does not apply unless the government would have punished the conduct regardless of its expressive component. See, *e.g., Barnes*, 501 U. S., at 566–572 (applying *O'Brien* to evaluate the application of a general nudity ban to nude dancing); *Clark*, 468 U. S., at 293 (applying *O'Brien* to evaluate the application of a general camping ban to a demonstration in the park). Here, however, Colorado would not be punishing Phillips if he refused to create any custom wedding cakes; it is punishing him because he refuses to create custom wedding cakes that express approval of same-sex marriage. In cases like this one, our precedents demand "'the most exacting scrutiny.'" *Johnson*, 491 U. S., at 412; accord, *Holder* v. *Humanitarian Law Project*, 561 U. S. 1, 28 (2010).

The Court of Appeals did not address whether Colorado's law survives strict scrutiny, and I will not do so in the first instance. There is an obvious flaw, however, with

---

[4] "[A] government regulation [of expressive conduct] is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." *United States* v. *O'Brien*, 391 U. S. 367, 377 (1968).

one of the asserted justifications for Colorado's law. According to the individual respondents, Colorado can compel Phillips' speech to prevent him from "'denigrat[ing] the dignity'" of same-sex couples, "'assert[ing] [their] inferiority,'" and subjecting them to "'humiliation, frustration, and embarrassment.'" Brief for Respondents Craig et al. 39 (quoting *J. E. B.* v. *Alabama ex rel. T. B.*, 511 U. S. 127, 142 (1994); *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U. S. 241, 292 (1964) (Goldberg, J., concurring)). These justifications are completely foreign to our free-speech jurisprudence.

States cannot punish protected speech because some group finds it offensive, hurtful, stigmatic, unreasonable, or undignified. "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Johnson*, *supra*, at 414. A contrary rule would allow the government to stamp out virtually any speech at will. See *Morse* v. *Frederick*, 551 U. S. 393, 409 (2007) ("After all, much political and religious speech might be perceived as offensive to some"). As the Court reiterates today, "it is not . . . the role of the State or its officials to prescribe what shall be offensive." *Ante,* at 16. "'Indeed, if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection.'" *Hustler Magazine, Inc.* v. *Falwell*, 485 U. S. 46, 55 (1988); accord, *Johnson*, *supra*, at 408–409. If the only reason a public-accommodations law regulates speech is "to produce a society free of . . . biases" against the protected groups, that purpose is "decidedly fatal" to the law's constitutionality, "for it amounts to nothing less than a proposal to limit speech in the service of orthodox expression." *Hurley*, 515 U. S., at 578–579; see also *United States* v. *Playboy Entertainment Group, Inc.*, 529 U. S. 803, 813 (2000) ("Where the designed benefit of a content-based speech

restriction is to shield the sensibilities of listeners, the general rule is that the right of expression prevails"). "[A] speech burden based on audience reactions is simply government hostility . . . in a different guise." *Matal* v. *Tam*, 582 U. S. ___, ___ (2017) (KENNEDY, J., concurring in part and concurring in judgment) (slip op., at 4).

Consider what Phillips actually said to the individual respondents in this case. After sitting down with them for a consultation, Phillips told the couple, "'I'll make your birthday cakes, shower cakes, sell you cookies and brownies, I just don't make cakes for same sex weddings.'" App. 168. It is hard to see how this statement stigmatizes gays and lesbians more than blocking them from marching in a city parade, dismissing them from the Boy Scouts, or subjecting them to signs that say "God Hates Fags"—all of which this Court has deemed protected by the First Amendment. See *Hurley*, *supra*, at 574–575; *Dale*, 530 U. S., at 644; *Snyder* v. *Phelps*, 562 U. S. 443, 448 (2011). Moreover, it is also hard to see how Phillips' statement is worse than the racist, demeaning, and even threatening speech toward blacks that this Court has tolerated in previous decisions. Concerns about "dignity" and "stigma" did not carry the day when this Court affirmed the right of white supremacists to burn a 25-foot cross, *Virginia* v. *Black*, 538 U. S. 343 (2003); conduct a rally on Martin Luther King Jr.'s birthday, *Forsyth County* v. *Nationalist Movement*, 505 U. S. 123 (1992); or circulate a film featuring hooded Klan members who were brandishing weapons and threatening to "'Bury the niggers,'" *Brandenburg* v. *Ohio*, 395 U. S. 444, 446, n. 1 (1969) (*per curiam*).

Nor does the fact that this Court has now decided *Obergefell* v. *Hodges*, 576 U. S. ___ (2015), somehow diminish Phillips' right to free speech. "It is one thing . . . to conclude that the Constitution protects a right to same-sex marriage; it is something else to portray everyone who does not share [that view] as bigoted" and unentitled to

express a different view. *Id.*, at ___ (ROBERTS, C. J., dissenting) (slip op., at 29). This Court is not an authority on matters of conscience, and its decisions can (and often should) be criticized. The First Amendment gives individuals the right to disagree about the correctness of *Obergefell* and the morality of same-sex marriage. *Obergefell* itself emphasized that the traditional understanding of marriage "long has been held—and continues to be held—in good faith by reasonable and sincere people here and throughout the world." *Id.*, at ___ (majority opinion) (slip op., at 4). If Phillips' continued adherence to that understanding makes him a minority after *Obergefell*, that is all the more reason to insist that his speech be protected. See *Dale*, *supra*, at 660 ("[T]he fact that [the social acceptance of homosexuality] may be embraced and advocated by increasing numbers of people is all the more reason to protect the First Amendment rights of those who wish to voice a different view").

* * *

In *Obergefell*, I warned that the Court's decision would "inevitabl[y] . . . come into conflict" with religious liberty, "as individuals . . . are confronted with demands to participate in and endorse civil marriages between same-sex couples." 576 U. S., at ___ (dissenting opinion) (slip op., at 15). This case proves that the conflict has already emerged. Because the Court's decision vindicates Phillips' right to free exercise, it seems that religious liberty has lived to fight another day. But, in future cases, the freedom of speech could be essential to preventing *Obergefell* from being used to "stamp out every vestige of dissent" and "vilify Americans who are unwilling to assent to the new orthodoxy." *Id.,* at ___ (ALITO, J., dissenting) (slip op., at 6). If that freedom is to maintain its vitality, reasoning like the Colorado Court of Appeals' must be rejected.